Goh Chai Huat (Administrator of the Estate of Goh Min Teck, deceased) v Lee Mui Ping & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO Q-04-55 OF 1998

GOPAL SRI RAM, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA

21 JULY 2000

Damages (Personal injury or death) *— Fatal accident — Loss of future earnings — Whether claimable — Civil Law Act 1956 s 7(3) & 8(2)(c)*

This appeal was concerned with the award of damages granted to the estate of the deceased for which the appellant maintained that two heads of award were inadequately low and that the dismissal of a third head was wrong in law. The three heads of damages were: (i) pain and suffering for which RM3,000 was awarded by the sessions court but on appeal the High Court raised it to RM6,000; (ii) loss of future earnings which was disallowed by the sessions court under s 7(3) of the Civil Law Act 1956 ('the Act') and this finding was confirmed by the High Court on appeal; and (iii) loss of EPF contributions which was disallowed by the sessions court for lack of proof and confirmed on appeal by the High Court. The appellant pleaded, inter alia, that he was entitled to make the claim for loss of future earnings under s 8(2)(c) of the Act.

Held, dismissing the appeal:

(1) No further factor was submitted why the court should interfere with the award for pain and suffering and on that ground the court confirmed the award to have been rightly and properly made as the High Court had considered all relevant factors (see p 431B).

(2) Pursuant to s 8(2)(c), the appellant was only entitled to claim funeral expenses and not any other claim which amounted to a loss to the estate consequent upon the death. The claim for loss of earnings was caught by the subsection as being an item of damages which was not allowed by law. As such, both the sessions court and the High Court were correct when they disallowed that claim (see p 431G).

(3) The fact that the deceased was working during his lifetime was not sufficient to show that he and his employer contributed to the EPF. There must be evidence of such contributions and a letter from the EPF would be sufficient to establish that fact. Such evidence was not before the sessions court and the court found no reason to disagree with the findings of both the sessions and the High Court (see p 431H–I).

A [**Bahasa Malaysia summary**

Rayuan ini adalah berkenaan dengan award gantirugi yang diberikan kepada harta pusaka simati bagi yang mana perayu mempertahankan bahawa dua tajuk award adalah terlalu rendah dan penolakan tajuk ketiga adalah salah di sisi undang-undang. Ketiga-tiga tajuk gantirugi
B tersebut adalah: (i) kesakitan dan kesengsaraan bagi yang mana RM3,000 telah diberikan oleh mahkamah sesyen tetapi atas rayuan Mahkamah Tinggi telah mempertingkatkannya kepada RM6,000; (ii) kehilangan mata pencarian yang telah tidak dibenarkan oleh mahkamah sesyen di bawah s 7(3) Akta Sivil 1956 ('Akta tersebut') dan keputusan ini telah disahkan oleh Mahkamah Tinggi atas
C rayuan; dan (iii) kehilangan sumbangan KWSP yang tidak dibenarkan oleh mahkamah sesyen kerana ketiadaan bukti dan disahkan atas rayuan oleh Mahkamah Tinggi. Perayu telah memplid, antara lainnya bahawa beliau berhak untuk membuat tuntutan bagi kehilangan mata pencarian masa hadapan di bawah s 8(2)(c) Akta
D tersebut.

Diputuskan, menolak rayuan tersebut:

(1) Tiada faktor selanjutnya telah dikemukakan mengapakah mahkamah seharusnya mencampuri dengan award bagi kesakitan
E dan kesengsaraan dan atas alasan itu mahkamah tersebut mengesahkan award itu telah diberikan secara betul dan mengikut aturan kerana Mahkamah Tinggi telah mempertimbangkan semua faktor yang relevan (lihat ms 431B).

(2) Selaras dengan s 8(2)(c), perayu adalah hanya berhak untuk
F menuntut perbelanjaan pengkebumian dan tidak tuntutan lain yang terjumlah kepada kerugian kepada harta pusaka tersebut akibat dari kematian tersebut. Tuntutan bagi kehilangan mata pencarian dilingkup oleh seksyen kecil tersebut sebagai merupakan perkara gantirugi yang tidak dibenarkan oleh undang-
G undang. Oleh yang demikian, kedua-duanya mahkamah sesyen dan juga Mahkamah Tinggi adalah betul ketika mereka tidak membenarkan tuntutan itu (lihat ms 431G).

(3) Hakikat bahawa simati bekerja ketika hayatnya tidak memadai untuk menunjukkan bahawa beliau dan majikannya menyumbang kepada KWSP. Haruslah terdapat keterangan bagi
H sumbangan-sumbangan yang sedemikian dan surat daripada KWSP akan memadai bagi menentukan fakta itu. Keterangan yang sedemikian tidak terdapat di hadapan mahkamah sesyen dan mahkamah tersebut tidak mendapati apa-apa alasan bagi menolak keputusan kedua-duanya mahkamah sesyen dan Mahkamah Tinggi (lihat ms 431H–I).]

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Notes

For cases on fatal accidents generally, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 263–384.

Legislation referred to

Civil Law Act 1956 ss 7(3), 8(2)(c)

Appeal from: Civil Appeal No 12–06 of 1996 (MR) (High Court, Miri)

Tai Choi Yu (*Tai Choi Yu & Co*) for the appellant.
Marina Foo (*Tang & Partners*) for the first and second respondents.
Lai Peng Seng (*Lai & Co*) for the third respondent.
Mahinder Singh Sandhu (*MS Sandhu & Co*) for the fourth respondent.

Siti Norma Yaakob JCA (delivering judgment of the court): In this running down appeal, two actions were originally filed in the sessions court at Miri in respect of claims for damages arising from the same accident. That accident was between a land cruiser and a motorcycle ridden with a pillion rider. The rider of the motorcycle, the fourth respondent before us, sued the owner and driver of the land cruiser, the first and second respondents for damages suffered as a result of the accident. The pillion rider succumbed to his injuries and his father, the appellant, filed separate proceedings on behalf of his deceased sons's estate against the first and second respondents, as well as the third respondent as owner of the motorcycle and the fourth respondent. In the sessions court, both suits were consolidated and liability was apportioned at 85% as against the second respondent, and 15% as against the fourth respondent.

This appeal is only concerned with the award of damages granted to the estate of the deceased for which the appellant maintains that two heads of award were inadequately low and that the dismissal of a third head was wrong in law.

The three heads of damages that were claimed and questioned before us relate to:

(1) pain and suffering for which RM3,000 was awarded by the sessions court on a 100% liability but on appeal the high court raised it to RM6,000.

(2) loss of future earnings which was disallowed by the sessions court under s 7(3) of the Civil Law Act 1956 ('the Act') and this finding was confirmed by the high court on appeal.

(3) loss of EPF contributions which was also disallowed by the session court for lack of proof and confirmed on appeal by the high court.

The accident happened on 12 January 1992, at 9.00 pm. The deceased was bleeding profusely from the nose, mouth and ears. He had a wound above his right eye and he suffered intracranial haemorrhage secondary to base skull fracture. The evidence shows that as a result of such intensive injuries,

A the sessions court made a finding that he became unconscious after 10.20 pm and he succumbed to his injuries at midnight of 13 January 1992. In short he was in agonising pain for almost one hours and deprived of the amenities of life for three hours and for such pain and suffering, his estate was awarded RM3,000 by the sessions court. On appeal the high court took into considerations the drop in the value of money and doubled the award B to RM6,000. Before us, no further factor was submitted why we should interfere with the award and on that ground we confirmed the award to have been rightly and properly made as the high court had considered all relevant factors.

The sessions court disallowed the claim for loss of future earnings on C the ground that s 7 of the Act under which the appellant bases his claim, does not make any provision for such a loss. Before us, Mr Tai Choi Yu, learned counsel for the appellant pleaded that he is entitled to make such a claim under s 8(2)(c) of the Act. For ease of reference we reproduce the relevant provisions of s 8(1) and (2)(c) as they must be read together.

D

> Effect of death on certain causes of action
>
> (1) Subject to this section, on death of any person all causes of action ... vested in him shall survive ... for the benefit of his estate:
>
> Provided ...
>
> E (2) where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —
>
> (a) ...
>
> (b) ...
>
> F (c) where death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated withoutreference to any loss or gain to his estate consequent or his death, except that a sum in respect of funeral expenses may be included.

We interpret s 8(2)(c) to mean that the appellant is only entitled to claim G funeral expenses and not any other claim which amounts to a loss to the estate consequent upon the death. A claim for loss of earnings is caught by that sub-section as being an item of damages which is not allowed by law. As such, both the sessions court and the high court were correct when they disallowed that claim.

H Lastly we come to the claim for EPF contribution which was also disallowed by the sessions court a decision that was also confirmed to have been rightly decided by the high court on the ground of lack of evidence. The fact that the deceased was working during his lifetime is not sufficient to show that he and his employer contributed to the EPF. There must be evidence of such contributions and a letter from the EPF would be I sufficient to establish that fact. Such evidence was not before the sessions court and we find no reason to disagree with the findings of both the sessions and the high courts.

For reasons appearing above, we had dismissed this appeal and confirmed the orders of the high court. RM800 agreed costs was also ordered to be paid out to the first, second and fourth respondents and the deposit to be refunded to the appellant.

Appeal dismissed.

Reported by Jafisah Jaafar